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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: _____

Attorneys for Plaintiffs,
 JENNIFER KIRK, DAVID DONNELL,
 and A. Y., a minor by and through A. DAVID Y.,
 parent and *guardian ad litem*

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

JENNIFER KIRK, an individual, DAVID
 DONNELL, an individual, and A. Y., a
 minor by and through A. DAVID Y.,
 parent and *guardian ad litem*, on their own
 behalf and on behalf of all others similarly
 situated,

Plaintiffs,

vs.

HEALTH NET, INC., a Delaware
 Corporation, INTERNATIONAL
 BUSINESS MACHINES CORP., a New
 York Corporation, and DOES 1-10,
 inclusive,

Defendants.

CASE NO. CV11 02536 RSWL

VBKx

CLASS ACTION COMPLAINT FOR:

1. Violation of the California Confidentiality of Medical Information Act, Civil Code §56 *et seq.*
2. Violation of the California Unfair Competition Law, Business & Professions Code §17200, *et seq.*
3. Invasion of Privacy - Intrusion, Public Disclosure of Private Facts, Misappropriation of Likeness and Identity, and California Constitutional Right to Privacy
4. Negligence
5. Bailment
6. Conversion
7. Breach of Fiduciary Duty

DEMAND FOR JURY TRIAL

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: _____

1 The Plaintiffs, JENNIFER KIRK, DAVID DONNELL, A. Y., a minor by and
2 through A. DAVID Y., parent and *guardian ad litem* (collectively, "Plaintiffs"),
3 individually and on behalf of all other similarly situated, hereby make the following
4 allegations against Defendants HEALTH NET INC. ("HEALTH NET") and
5 INTERNATIONAL BUSINESS MACHINES CORP. ("IBM") upon information and
6 belief, except as to their own actions, the investigation of their counsel, and the facts
7 that are a matter of public record:
8
9

10 NATURE OF CLAIM

11
12 1. This is a consumer class action lawsuit brought on behalf of Plaintiffs,
13 individually, and on behalf of all other adult and minor persons whose identities,
14 personal information, financial information, and medical information were lost or
15 disclosed by Defendants in or around January 2011.
16

17 2. Defendants failed to keep safe their customers' sensitive private
18 information, and to promptly notify its customers of the data breach, despite the fact
19 that another similar data breach had occurred in 2009. At that time, HEALTH NET's
20 failures with regard to the safekeeping of customer information data as well as its
21 failures to promptly notify its customers and governmental authorities of the data
22 breach were scrutinized by the Connecticut Attorney General and found to deliberately
23 violate federal law as well as HEALTH NET's own policies and procedures.
24
25
26
27
28

PARTIES

3. Plaintiff JENNIFER KIRK is a resident of the State of California, is over eighteen years of age and a customer of HEALTH NET.

4. Plaintiff DAVID DONNELL is a resident of the State of Georgia, is over eighteen years of age and a customer of HEALTH NET.

5. Plaintiff A. Y., a minor by and through A. DAVID Y., parent and *guardian ad litem*, is a resident of the State of California and is a customer of HEALTH NET.

6. Defendant HEALTH NET is a corporation organized under the laws of the State of Delaware, registered with the California Secretary of State to do business in the State of California, with its principal place of business in Woodland Hills, Los Angeles County, California, which is located in the Central District of California.

7. Defendant IBM is a corporation organized under the laws of the State of New York, with its principal place of business in Armonk, New York.

8. The true names and capacities, whether individual, corporate, associate or otherwise, of each of the defendants designated as a DOE are unknown to Plaintiffs at this time and therefore Plaintiffs sue defendants by such fictitious names. Plaintiffs will ask leave of the Court to amend this Complaint to show the true names and capacities of the DOE defendants when that information has been ascertained. Each of the defendants designated herein as a DOE is legally responsible in some manner and liable for the events and happenings herein alleged and, in such manner, proximately

1 caused harm to Plaintiffs as further alleged herein.

2 9. Each of the named Defendants acted as the employee, agent, partner,
3 alter-ego and/or joint venturer of each of the other named Defendants and, in doing the
4 acts and carrying out the wrongful conduct alleged, each of the Defendants acted
5 within the scope of said relationship with the permission, consent and ratification of
6 each of the other named Defendants.
7
8

9 **JURISDICTION AND VENUE**

10 10. The Court has jurisdiction over this action pursuant to the Class Action
11 Fairness Act, and particularly 28 U.S.C. §1332(d)(2) because the matter in controversy
12 exceeds \$5,000,000 and some of the members of the purported class are citizens of a
13 state that is different from the principal place of business of the Defendants.
14

15 11. Venue is proper in the Central District of California pursuant to 28U.S.C.
16 §§1391(b)-(c) and 1441(a). HEALTH NET's principal place of business is in this
17 District, Plaintiffs KIRK, A. Y., a minor by and through A. DAVID Y., and numerous
18 other class members reside in this District, and the alleged actions, events and
19 occurrences giving rise to this action occurred in this District.
20
21

22 **GENERAL ALLEGATIONS**

23 12. HEALTH NET is one of the nation's largest managed care providers.
24

25 13. On January 21, 2011, IBM, which manages HEALTH NET's data center
26 operations, notified HEALTH NET that it could not locate nine hard disk drives that
27 had been used in HEALTH NET's corporate servers and that IBM was handling on
28

1 behalf of HEALTH NET. The drives contain personal, financial and medical
2 information (collectively, "Private Information") pertaining to nearly two million
3 customers, employees, and healthcare providers.
4

5 14. Almost two months later, on March 14, 2011, HEALTH NET notified
6 some of its customers that Private Information pertaining to them, including, but not
7 limited to name, address, health information, Social Security Number and financial
8 information, was included on the hard disk drives.
9

10 15. This is not the first time HEALTH NET has lost electronically stored,
11 confidential, and personal financial and health-related information concerning its
12 customers.
13

14 16. On or about May 2009, HEALTH NET learned that a portable computer
15 disk drive disappeared after or during transport from California to Connecticut (the
16 "2009 Data Breach").
17

18 17. The drive HEALTH NET lost during the 2009 Data Breach contained
19 confidential data concerning hundreds of thousands of customers, including their
20 names, addresses, social security numbers, bank account numbers, and health
21 information.
22

23 18. After the 2009 Data Breach, HEALTH NET failed to promptly inform its
24 customers that they were affected by the 2009 Data Breach.
25

26 19. The Connecticut Attorney General determined that HEALTH NET
27 violated its own policies and procedures and its obligations under federal law by
28

1 mishandling the data subject to the 2009 Data Breach.

2 20. As a result of the 2009 Data Breach, the Connecticut Attorney General
3 filed suit against HEALTH NET for multiple violations of the Health Insurance
4 Portability and Accountability Act of 1996, as amended by the Health Information
5 Technology for Economic and Clinical Health Act, 42 U.S.C. §1302(a) ("HIPAA"),
6 violations of Department of Health and Human Services Regulations, 45 C.F.R. §160
7 *et seq.*, and willful unfair trade practices, in an action entitled *Attorney General of the*
8 *State of Connecticut v. Health Net of the Northeast, Inc.*, Case No. 3:10-cv-00057-PCD
9 (D. Conn.) (hereinafter, the "2009 Connecticut Action").
10
11
12

13 21. HEALTH NET settled the 2009 Connecticut Action by entering into a
14 stipulated judgment that required it to make monetary payments to the State of
15 Connecticut and to enhance its security procedures and training in order to prevent any
16 further data breaches, among other terms. Despite that stipulated judgment, HEALTH
17 NET again flouted its obligations to protect its customers' data by allowing the present
18 data breach to occur in January 2011.
19
20

21 CONSEQUENCES OF DEFENDANTS' CONDUCT

22 22. The ramifications of Defendants' loss of Plaintiffs' data are severe.

23
24 23. The information Defendants lost, including Plaintiffs' identifying
25 information, social security numbers, and other financial information, is "as good as
26 gold" to identity thieves, in the words of the Federal Trade Commission ("FTC").
27
28 FTC, *About Identity Theft*, available at

1 <<http://www.ftc.gov/bcp/edu/microsites/idtheft/consumers/about-identity-theft.html>>
2 (visited March 23, 2011). Identity theft occurs when someone uses another's personal
3 identifying information, such as that person's name, Social Security Number, or credit
4 card number, without permission to commit fraud or other crimes. *Id.* The FTC
5 estimates that as many as 9 million Americans have their identities stolen each year.
6

7
8 *Id.*

9 24. Identity thieves can use identifying data such as Social Security Numbers
10 to open new financial accounts and incur charges in another person's name, take out
11 loans in another person's name, incur charges on existing accounts, or clone ATM,
12 debit, or credit cards. *Id.*
13

14 25. Identity thieves can use personal information such as that pertaining to
15 Plaintiffs which Defendants lost to perpetrate a variety of crimes that do not cause
16 financial loss, but nonetheless harm the victims. For instance, identity thieves may
17 commit various types of government fraud such as: immigration fraud; obtaining a
18 driver's license or identification card in the victim's name but with another's picture;
19 using the victim's information to obtain government benefits; or filing a fraudulent tax
20 return using the victim's information to obtain a fraudulent refund.
21
22

23 26. In addition, identity thieves may get medical services using the Plaintiffs'
24 lost information or commit any number of other frauds, such as obtaining a job,
25 procuring housing, or even giving false information to police during an arrest.
26
27

28 27. Annual monetary losses from identity theft are in the billions of dollars.

1 According to a Presidential Report on identity theft produced in 2008:

2 In addition to the losses that result when identity thieves
3 fraudulently open accounts or misuse existing accounts, . . . individual
4 victims often suffer indirect financial costs, including the costs incurred in
5 both civil litigation initiated by creditors and in overcoming the many
6 obstacles they face in obtaining or retaining credit. Victims of non-
7 financial identity theft, for example, health-related or criminal record
8 fraud, face other types of harm and frustration.

9 In addition to out-of-pocket expenses that can reach thousands of
10 dollars for the victims of new account identity theft, and the emotional toll
11 identity theft can take, some victims have to spend what can be a
12 considerable amount of time to repair the damage caused by the identity
13 thieves. Victims of new account identity theft, for example, must correct
14 fraudulent information in their credit reports and monitor their reports for
15 future inaccuracies, close existing bank accounts and open new ones, and
16 dispute charges with individual creditors.

17 *The President's Identity Theft Task Force Report* at p.21 (Oct. 21, 2008),
18 available at <<http://www.idtheft.gov/reports/StrategicPlan.pdf>>.

19 28. "In addition to the financial harm associated with other types of identity
20 theft, victims of medical identity theft may have their health endangered by inaccurate
21 entries in their medical records. This inaccurate information can potentially cause
22 victims to receive improper medical care, have their insurance depleted, become
23 ineligible for health or life insurance, or become disqualified from some jobs. Victims
24 may not even be aware that a theft has occurred because medical identity theft can be
25 difficult to discover, as few consumers regularly review their medical records, and
26 victims may not realize that they have been victimized until they receive collection
27 notices, or they attempt to seek medical care themselves, only to discover that they
28 have reached their coverage limits." *Id.* at 30.

29. “With the advent of the prescription drug benefit of Medicare Part D, the Department of Health and Human Services’ Office of the Inspector General (HHS OIG) has noted a growing incidence of health care frauds involving identity theft.” Identity thieves can use such information “fraudulently to enroll unwilling beneficiaries in alternate Part D plans in order to increase . . . sales commissions” or commit other types of fraud. “The types of fraud that can be perpetrated by an identity thief are limited only by the ingenuity and resources of the criminal.” *Id.* at 31.

30. According to the U.S. Government Accountability Office (“GAO”), which conducted a study regarding data breaches:

[L]aw enforcement officials told us that in some cases, stolen data may be held for up to a year or more before being used to commit identity theft. Further, once stolen data have been sold or posted on the Web, fraudulent use of that information may continue for years. As a result, studies that attempt to measure the harm resulting from data breaches cannot necessarily rule out all future harm.

GAO, *Report to Congressional Requesters*, at p.33 (June 2007), available at <<http://www.gao.gov/new.items/d07737.pdf>>.

31. The unauthorized disclosure of Social Security Numbers can be particularly damaging, because Social Security Numbers cannot easily be replaced. In order to obtain a new number, a person must prove, among other things, that he or she continues to be disadvantaged by the misuse. Thus, no new number can be obtained until the damage has been done. Furthermore, as the Social Security Administration (“SSA”) warns:

a new number probably will not solve all your problems. This is because

1 other governmental agencies (such as the Internal Revenue Service and
 2 state motor vehicle agencies) and private businesses (such as banks and
 3 credit reporting companies) likely will have records under your old
 4 number. Also, because credit reporting companies use the number, along
 5 with other personal information, to identify your credit record, using a
 6 new number will not guarantee you a fresh start. This is especially true if
 7 your other personal information, such as your name and address, remains
 8 the same.

9 If you receive a new Social Security Number, you will not be able
 10 to use the old number anymore.

11 For some victims of identity theft, a new number actually creates
 12 new problems. If the old credit information is not associated with the new
 13 number, the absence of any credit history under the new number may
 14 make it more difficult for you to get credit.

15 SSA, *Identity Theft and Your Social Security Number*, SSA Publication No. 05-
 16 10064 (Aug. 2009), available at <<http://www.ssa.gov/pubs/10064.html>>.

17 32. Plaintiffs and the Class they seek to represent now face years of constant
 18 surveillance of their financial and medical records, monitoring, loss of rights, and
 19 potential medical problems.

20 **CLASS ACTION ALLEGATIONS**

21 33. Plaintiffs bring this action on their own behalf, and on behalf of all other
 22 persons similarly situated ("the Class"). The Class that Plaintiffs seek to represent is:
 23 All adult and minor persons who are or who ever been a customer of HEALTH NET
 24 whose personal, financial or medical information was included in the hard disk drives
 25 lost or stolen in or around January 2011. Excluded from the Class are Defendants;
 26 officers, directors, and employees of Defendants; any entity in which Defendants
 27 have a controlling interest; the affiliates, legal representatives, attorneys, heirs, and
 28

1 assigns of the Defendants.

2 34. The members of the Class are so numerous that the joinder of all members
3 is impractical. While the exact number of Class members is unknown to Plaintiffs at
4 this time, based on information and belief, it is at least approximately 1.9 million.
5

6 35. There is a well-defined community of interest among the members of the
7 Class because common questions of law and fact predominate, Plaintiffs' claims are
8 typical of the members of the Class, and Plaintiffs can fairly and adequately represent
9 the interests of the Class.
10

11 36. This action satisfies the requirements of Federal Rule of Civil Procedure
12 23(b)(3) because it involves questions of law and fact common to the member of the
13 Class that predominate over any questions affecting only individual members,
14 including, but not limited to:
15
16

- 17 a. Whether Defendants unlawfully used, maintained, lost or disclosed
18 Class members' personal, financial and medical information;
19
- 20 b. Whether Defendants' conduct violated the California
21 Confidentiality of Medical Information Act, Civil Code §56 *et seq.*;
22
- 23 c. Whether Defendants' conduct violated the California Business &
24 Professions Code §17200, *et seq.*
25
- 26 d. Whether Defendants' conduct was negligent;
27
- 28 e. Whether Defendants acted willfully and/or with oppression, fraud,
or malice;

- 1 f. Whether Defendants' conduct constituted Intrusion;
- 2 g. Whether Defendants' conduct constituted Public Disclosure of
- 3 Private Facts;
- 4
- 5 h. Whether Defendants' conduct constituted Misappropriation of
- 6 Likeness and Identity;
- 7
- 8 i. Whether Defendants' conduct violated Class members' California
- 9 Constitutional Right to Privacy;
- 10
- 11 j. Whether Defendants' conduct constituted Bailment;
- 12
- 13 k. Whether Defendants' conduct constituted Conversion;
- 14
- 15 l. Whether Defendants' conduct constituted Breach of Fiduciary
- 16 Duty;
- 17
- 18 m. Whether Plaintiffs and the Class are entitled to damages, civil
- 19 penalties, punitive damages, and/or injunctive relief.

20 37. Plaintiffs' claims are typical of those of other Class members because
21 Plaintiffs' information, like that of every other class member, was misused and/or
22 disclosed by Defendants.

23 38. Plaintiffs will fairly and accurately represent the interests of the Class.

24 39. The prosecution of separate actions by individual members of the Class
25 would create a risk of inconsistent or varying adjudications with respect to individual
26 members of the Class, which would establish incompatible standards of conduct for
27 Defendants and would lead to repetitive adjudication of common questions of law and
28

1 fact. Accordingly, class treatment is superior to any other method for adjudicating the
2 controversy. Plaintiffs know of no difficulty that will be encountered in the
3 management of this litigation that would preclude its maintenance as a class action
4 under Rule 23(b)(3).
5

6 40. Damages for any individual class member are likely insufficient to justify
7 the cost of individual litigation, so that in the absence of class treatment, Defendants'
8 violations of law inflicting substantial damages in the aggregate would go un-remedied
9 without certification of the Class.
10

11 41. Defendants have acted or refused to act on grounds that apply generally to
12 the class, as alleged above, and certification is proper under Rule 23(b)(2).
13

14 **FIRST COUNT**

15 **Violation of the California Confidentiality of Medical Information Act, Civil Code**

16 **§56 *et seq.***

17 **(Against All Defendants)**

18 42. Plaintiffs incorporate the substantive allegations contained in all previous
19 paragraphs as if fully set forth herein.
20

21 43. Defendants are providers of health care within the meaning of Civil Code
22 § 56.06(a) and maintain medical information as defined by Civil Code § 56.05(g).
23

24 44. Plaintiffs are patients of Defendants, as defined in Civil Code § 56.05(h).
25 Defendants maintain personal medical information of Plaintiffs and the Class.
26

27 45. Defendants have misused and/or disclosed medical information regarding
28

1 Plaintiffs without written authorization compliant with the provisions of Civil Code §§
2 56 *et seq.*

3
4 46. Defendants' misuse and/or disclosure of medical information regarding
5 the Plaintiffs and the Class constitutes a violation of Civil Code §§ 56.10, 56.11, 56.13,
6 and 56.26.

7
8 47. Plaintiffs and the Class have suffered damages from the improper misuse
9 and/or disclosure of their medical information and therefore Plaintiffs and the Class
10 seek relief under Civil Code §§ 56.35 and 56.36.

11
12 48. Plaintiffs and the Class seek actual damages, statutory damage, statutory
13 penalties, attorney fees and costs pursuant to Civil Code §§ 56.35 and 56.36.

14 **SECOND COUNT**

15
16 **Violation of the California Unfair Competition Law, Business & Professions Code**

17 **§17200, *et seq.***

18 **(Against all Defendants)**

19
20 49. Plaintiffs incorporate the substantive allegations contained in all previous
21 paragraphs as if fully set forth herein.

22 50. Defendants' conduct constitutes unfair and illegal and fraudulent business
23 practices within the meaning of the California Business & Professions Code § 17200 *et*
24 *seq.*

25
26 51. Defendants' conduct violated certain laws as alleged herein as well as
27 possibly HIPAA and the Department of Health and Human Services Regulations. By
28

1 engaging in the said conduct in the course of doing business, Defendants engaged in
2 unlawful business practices in violation of the California Business & Professions Code
3
4 § 17200 *et seq.*

5 52. By engaging in the above-described conduct in the course of doing
6 business, Defendants engaged in unfair business practices in violation of the California
7 Business & Professions Code section 17200 *et seq.* The harm to each Plaintiff
8 outweighed any utility that Defendants' conduct may have produced.
9

10 53. HEALTH NET's failure to disclose to its customers for almost two
11 months after the fact that their personal, financial and medical information was lost,
12 misused and/or disclosed, was likely to mislead the general public and constitutes a
13 fraudulent act or practice in violation of California Business & Professions Code
14 section 17200 *et seq.*
15
16

17 54. Plaintiffs suffered injury in fact and lost property and money as a result of
18 Defendants' conduct.
19

20 55. Plaintiffs seek restitution and injunctive relief on behalf of the Class.
21

22 **THIRD COUNT**

23 **Invasion of Privacy - Intrusion, Public Disclosure of Private Facts,** 24 **Misappropriation of Likeness and Identity, and California Constitutional Right** 25 **to Privacy** 26 **(Against All Defendants)** 27

28 56. Plaintiffs incorporate the substantive allegations contained in all previous

1 paragraphs as if fully set forth herein.

2 57. Plaintiffs had a reasonable expectation of privacy in the Private
3 Information Defendants mishandled.
4

5 58. By failing to keep Plaintiffs' Information safe, and by misusing and/or
6 disclosing said information to unauthorized parties for unauthorized use, Defendants
7 invaded Plaintiffs' privacy by:
8

- 9 a. intruding into Plaintiffs' private affairs in a manner that would be
10 highly offensive to a reasonable person;
- 11 b. publicizing private facts about Plaintiffs, which is highly offensive
12 to a reasonable person;
- 13 c. using and appropriating Plaintiffs' identity without Plaintiffs'
14 consent;
15
- 16 d. violating Plaintiffs' right to privacy under California Constitution,
17 Article 1, Section 1, through the improper use of Plaintiffs' Private
18 Information properly obtained for a specific purpose for another
19 purpose, or the disclosure of it to some third party.
20
21

22 59. Defendants knew, or acted with reckless disregard of the fact that, a
23 reasonable person in Plaintiffs' position would consider Defendants' actions highly
24 offensive.
25

26 60. Defendants invaded Plaintiffs' right to privacy and intruded into
27 Plaintiffs' private affairs by misusing and/or disclosing Plaintiffs' Private Information
28

1 without Plaintiffs' informed, voluntary, affirmative and clear consent.

2 61. As a proximate result of such misuse and disclosures, Plaintiffs'
3 reasonable expectations of privacy in their Private Information were unduly frustrated
4 and thwarted. Defendants' conduct amounted to a serious invasion of Plaintiffs'
5 protected privacy interests.
6

7 62. In failing to protect Plaintiffs' Private Information, and in misusing and/or
8 disclosing Plaintiffs' Private Information, despite the circumstances surrounding the
9 2009 Data Breach, Defendants have acted with malice and oppression and in
10 conscious disregard of Plaintiffs' and the Class members' rights to have such
11 information kept confidential and private. Plaintiffs, therefore, seek an award of
12 punitive damages on behalf of the Class.
13
14

15 **FOURTH COUNT**

16 **Negligence**

17 **(Against All Defendants)**

18 63. Plaintiffs incorporate the substantive allegations contained in all previous
19 paragraphs as if fully set forth herein.
20

21 64. Defendants came into possession of Plaintiffs' Private Information and
22 had a duty to exercise reasonable care in safeguarding and protecting such information
23 from being compromised, lost, stolen, misused, and/or disclosed to unauthorized
24 parties.
25
26

27 65. Defendant HEALTH NET had a duty to timely disclose that Plaintiffs'
28

1 Private Information within its possession had been compromised.

2 66. Defendants had a duty to have procedures in place to detect and prevent
3 the loss or unauthorized dissemination of Plaintiffs' Private Information. The 2011
4 Data Breach was reasonably foreseeable by Defendants, especially in light of the 2009
5 Data Breach.
6

7 67. Defendants, through their actions and/or omissions, unlawfully breached
8 their duty to Plaintiffs by failing to exercise reasonable care in protecting and
9 safeguarding Plaintiffs' Private Information within Defendants' possession.
10

11 68. Defendants, through their actions and/or omissions, unlawfully breached
12 their duty to Plaintiffs by failing to exercise reasonable care by failing to have
13 appropriate procedures in place to detect and prevent dissemination of Plaintiffs'
14 Private Information.
15

16 69. Defendants, through their actions and/or omissions, unlawfully breached
17 their duty to timely disclose to the Plaintiffs and the Class members the fact that their
18 Private Information within their possession had been compromised.
19

20 70. Defendants' negligent and wrongful breach of their duties owed to
21 Plaintiffs and the Class proximately caused Plaintiffs' and Class members' Private
22 Information to be compromised.
23

24 71. Plaintiffs seek the award of actual damages on behalf of the Class.
25

26 ///

27 ///

FIFTH COUNT

Bailment

(Against All Defendants)

72. Plaintiffs incorporate the substantive allegations contained in all previous paragraphs as if fully set forth herein.

73. Plaintiffs and the Class members delivered and entrusted their Private Information to Defendants for the sole purpose of receiving health insurance services from Defendants.

74. During the time of bailment, Defendants owed Plaintiffs and the Class members a duty to safeguard this information properly and maintain reasonable security procedures and practices to protect such information. Defendants breached this duty.

75. As a result of these breaches of duty, Plaintiffs and the Class members have suffered harm.

76.

77. Plaintiffs seek actual damages on behalf of the Class.

SIXTH COUNT

Conversion

(Against All Defendants)

78. Plaintiffs incorporate the substantive allegations contained in all previous paragraphs as if fully set forth herein.

1 79. Plaintiffs and Class members were the owners and possessors of their
2 Private Information. As the result of Defendants' wrongful conduct, Defendants have
3 interfered with the Plaintiffs' and Class Members' rights to possess and control such
4 property, to which they had a superior right of possession and control at the time of
5 conversion.
6

7
8 80. As a direct and proximate result of Defendants' conduct, Plaintiffs and the
9 Class members suffered injury, damage, loss or harm and therefore seek compensatory
10 damages.
11

12 81. In converting Plaintiffs' Private Information, despite the circumstances
13 surrounding the 2009 Data Breach, Defendants have acted with malice, oppression
14 and in conscious disregard of the Plaintiffs' and Class members' rights. Plaintiffs,
15 therefore, seek an award of punitive damages on behalf of the Class.
16

17 **SEVENTH COUNT**

18 **Breach of Fiduciary Duty**

19 **(Against HEALTH NET)**
20

21 82. Plaintiffs incorporate the substantive allegations contained in all previous
22 paragraphs as if fully set forth herein.
23

24 83. HEALTH NET stands in a position of trust and confidence with Plaintiffs
25 and the Class members, as their managed healthcare network. Accordingly, HEALTH
26 NET owes Plaintiffs and the Class members fiduciary duties, including the duties of
27 confidentiality, loyalty, honesty, disclosure, good faith, and the duty to act in their best
28

1 interests.

2 84. HEALTH NET failed to act as a reasonably careful healthcare provider by
3 mishandling, losing and/or disclosing Plaintiffs' and Class members' Private
4 Information as alleged above and, thus, breached the fiduciary duties it owed to
5 Plaintiffs and the Class members.
6

7 85. Plaintiffs are informed and believe that HEALTH NET knowingly acted
8 against their interests by mishandling, misusing and/or disclosing, and by failing to
9 follow proper procedures to protect, Plaintiffs' and Class members' Private
10 Information.
11

12 86. Plaintiffs and the Class members did not consent to HEALTH NET's
13 mishandling and loss of their Private Information.
14

15 87. HEALTH NET failed adequately to disclose its breach of fiduciary duty
16 to Plaintiffs and the Class members in a timely manner.
17

18 88. Plaintiffs and the Class members were harmed by HEALTH NET's
19 breach of fiduciary duty, when their Private Information was misused and/disclosed.
20 Plaintiffs seek actual damages on behalf of the Class.
21

22 89. HEALTH NET mishandled Plaintiffs' and the Class members' Private
23 Information in conscious disregard of their rights and expectations of privacy,
24 amounting to fraudulent, malicious, and oppressive breaches of fiduciary duty
25 justifying punitive damages against HEALTH NET in an amount sufficient to punish
26 HEALTH NET for its egregious misconduct.
27
28

PRAYER FOR RELIEF

WHEREFORE Plaintiffs pray for judgment as follows:

- A. For an Order certifying this action as a class action and appointing Plaintiffs and their Counsel to represent the Class;
- B. For equitable relief enjoining Defendants from engaging in the wrongful conduct complained of herein pertaining to the misuse and/or disclosure of Plaintiffs' and Class members' Private Information, and from refusing to issue prompt, complete and accurate disclosures to the Plaintiff and Class members;
- C. For equitable relief requiring restitution and disgorgement of the revenues wrongfully retained as a result of Defendants' wrongful conduct;
- D. For an award of actual damages, compensatory damages, statutory damages, and statutory penalties, in an amount to be determined;
- E. For an award of punitive damages;
- F. For an award of costs of suit and attorneys' fees, as allowable by law; and
- G. Such other and further relief as this court may deem just and proper.

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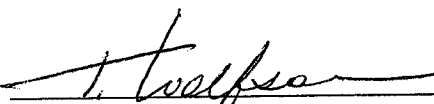
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial of their claims to the extent authorized by law.

Dated: March 24, 2011

AHDOOT & WOLFSON, PC

By: 
Tina Wolfson

Attorneys for Plaintiffs,
JENNIFER KIRK, DAVID DONNELL,
and A. Y., a minor by and through A.
DAVID Y., parent and *guardian ad litem*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Ronald S. W. Lew and the assigned discovery Magistrate Judge is Victor B. Kenton.

The case number on all documents filed with the Court should read as follows:

CV11- 2536 RSWL (VBKx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

TINA WOLFSON, SBN 172098 JEM Document 4 Filed 03/30/11 Page 25 of 27 Page ID #:38
ROBERT AHDOOT, SBN 172098
AHDOOT & WOLFSON, APC
10850 Wilshire Boulevard, Suite 370
Los Angeles, California 90024
Tel: (310) 474-9111; Fax: (310) 474-8585

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JENNIFER KIRK, an individual, DAVID DONNELL,
an individual, and A.Y., a minor by and through A.
DAVID Y., parent and *guardian ad litem*, on their own
behalf of all others similarly situated,

PLAINTIFF(S)

v.

HEALTH NET, INC., a Delaware Corporation,
INTERNATIONAL BUSINESS MACHINES CORP., a
New York Corporation, and DOES 1-10, inclusive
DEFENDANT(S).

CASE NUMBER

CV11 02536 RSWL VBKx

SUMMONS

TO: DEFENDANT(S): HEALTH NET, INC., a Delaware Corporation; and INTERNATIONAL BUSINESS
MACHINES CORP., a New York Corporation

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you
must serve on the plaintiff an answer to the attached ☒ complaint ☐ _____ amended complaint
☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer
or motion must be served on the plaintiff's attorney, AHDOOT & WOLFSON, PC, whose address is
10850 WILSHIRE BOULEVARD, SUITE 370, LOS ANGELES CA 90024. If you fail to do so,
judgment by default will be entered against you for the relief demanded in the complaint. You also must file
your answer or motion with the court.

Clerk, U.S. District Court

Dated: MAR 30 2011

By: CHRISTOPHER POWERS
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed
60 days by Rule 12(a)(3)].

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)

JENNIFER KIRK, an individual, DAVID DONNELL, an individual, and A. Y., a minor by and through A. DAVID Y., parent and guardian ad litem, on their own behalf and on behalf of all others similarly situated,

DEFENDANTS

HEALTH NET, INC., a Delaware Corporation, INTERNATIONAL BUSINESS MACHINES CORP., a New York Corporation, and DOES 1-10, inclusive,

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

TINA WOLFSON (SBN#174806)
AHDoot & WOLFSON, PC, 10850 Wilshire Boulevard, Suite 370
Los Angeles, California 90024
Phn: (310) 474-9111

Attorneys (If Known)**II. BASIS OF JURISDICTION** (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)**CLASS ACTION** under F.R.C.P. 23: ☒ Yes ☐ No**MONEY DEMANDED IN COMPLAINT:** Excess of \$5,000,000**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

1 Violation of the California Confidentiality of Medical Information Act, Civil Code §56 et seq., and 6 others

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER ACTIONS	CONTRACTS	PERSONAL INJURY	PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General Habeas Corpus	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 862 Black Lung (923)
<input checked="" type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 891 Agricultural Act	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 290 All Other Real Property				
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice					
<input type="checkbox"/> 950 Constitutionality of State Statutes					

CV11 02536**FOR OFFICE USE ONLY:** Case Number: _____**AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.**

VIII(a). **IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). **RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	San Francisco County State of Georgia

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	State of New York

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):

T. Walpole

Date March 24, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))